

# **Exhibit 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DIAGEO NORTH AMERICA, INC.,:

Plaintiff, :

v. : CASE NO. 1:17-CV-04259-LLS

W.J. DEUTSCH & SONS, LTD :

D/b/a DEUTSCH FAMILY WINE :

& SPIRITS and BARDSTOWN :

BARREL SELECTIONS, LLC, :

Defendants. :

- - - - -x

Videotaped Deposition of PHILIP HAMPTON, II  
Washington, D.C.  
Friday, June 4, 2019  
9:34 a.m.

Job No.: 30396

Pages 1 through 286

Reported by: Cassandra E. Ellis, RPR

1 Q Is that the ridged edge?

2 MR. SERVODIDIO: Objection,  
3 vague and ambiguous, outside the  
4 scope.

5 A I don't believe it is the  
6 ridged edge.

7 Q And is the arrow-shaped text  
8 divider on the label depicted anywhere in  
9 the drawing of the mark that appears on  
10 the `812 registration?

11 A I -- I said it's not depicted  
12 on the image of the Bulleit bottle in the  
13 `812 registration.

14 Q And is it -- withdrawn.  
15 It's your position that even  
16 though the element of arrow-shaped  
17 text divider on the label is not  
18 depicted in the drawing of the mark  
19 for the `812 registration that the  
20 element is still protected by the `812  
21 registration?

22 A I believe --

23 MR. SERVODIDIO: Object to  
24 form, outside the scope.

25 A Again, I believe the -- that

1 element is part of the label design which  
2 is claimed.

3 Q And it's your position that the  
4 use of the words "label design"  
5 sufficiently covers the elements of  
6 arrow-shaped text divider on the label?

7 MR. SERVODIDIO: Vague and  
8 ambiguous, outside the scope.

9 A I think, in this situation, it  
10 does.

11 Q How so?

12 A I think that the label is part  
13 of the overall Trade Dress of the Bulleit  
14 bottle. And, you know, everything on the  
15 label is -- is not separately called out.  
16 But I think it is -- that the label is  
17 the label, and what is on the label is  
18 part of the registration, and that  
19 includes the arrow-shaped text divider on  
20 the label.

21 Q And what other elements of the  
22 label does that include that are not  
23 expressly called out in the description  
24 of the mark or the drawing of the mark?

25 MR. SERVODIDIO: Objection,

1 beyond the scope of the opening

2 rebuttal reports, asked and

3 answered.

4 A There appears to be other

5 things on that label, but my eyesight is

6 such that I can't make it out.

7 Q Understood.

8 I think there is a bigger

9 picture in the file wrapper, that we

10 marked previously as Exhibit 42. If you

11 go to the second to last page you might

12 be able to see that one better.

13 A Okay.

14 Q Do you see any words on the

15 page Diageo 38094 that are included in

16 the label for the Bulleit Bourbon

17 packaging but are not expressly

18 identified in the '812 registration?

19 A Kentucky straight bourbon

20 whiskey.

21 Q Anything else?

22 A I can't make out the something,

23 something, the Bulleit Distilling

24 Company.

25 Q Mm-hmm. And is it your opinion

1 that all of those words are also  
2 contained in and protected by the '812  
3 registration?

4 MR. SERVODIDIO: Objection,  
5 compound, outside the scope of  
6 opening and expert reports, vague  
7 and ambiguous, confusing.

8 A I believe that the '812  
9 registration covers the Bulleit Trade  
10 Dress. And the Bulleit Trade Dress is --  
11 the Bulleit Trade Dress includes the  
12 label, so it would include the words on  
13 the label.

14 Q Understood.

15 And have you seen the -- a  
16 Bulleit product in the marketplace  
17 before?

18 A Yes, I have.

19 MR. SERVODIDIO: Asking the  
20 witness to give me a chance to  
21 make an objection before -- I know  
22 we want to get out of here, but  
23 give me a chance to object.

24 MS. KOROTKIN: It gets hard.

25 MR. SERVODIDIO: Vague and

1           ambiguous as to product. There  
2           are many Bulleit products. You  
3           can answer.

4       BY MS. KOROTKIN:

5           Q       Well, we can ask a different  
6           way.

7                   Have you had occasion to see a  
8       Bulleit Bourbon bottle in the 750  
9       milliliter size in the marketplace  
10      before?

11          A       Yes.

12          Q       And sitting here today, do you  
13      recall what the neck of that product  
14      looked like, was it covered by anything?

15                  MR. SERVODIDIO: Objection,  
16      compound, vague and ambiguous.

17          A       I think some of it may have  
18      been covered by -- the neck is -- but I  
19      think some of it was covered by black  
20      wrapper or something.

21                  MS. KOROTKIN: Mm-hmm.

22          Yeah. I have something that can  
23      help us. Hold on one second.

24          Just show you what's been  
25      previously marked as Exhibit 30.

1 (Previously marked Exhibit  
2 No. 30 was identified.)  
3 BY MS. KOROTKIN:  
4 Q This is photographs a Bulleit  
5 Bourbon bottle.  
6 A Yep.  
7 Q And what do you -- how would  
8 you describe the feature at the top of  
9 the bottle?  
10 MR. SERVODIDIO: Objection,  
11 irrelevant, outside the scope.  
12 A What do you mean, the feature  
13 at the top of the bottle?  
14 Q You mentioned there being  
15 plastic at the top of the bottle.  
16 A Well, I mean, it looks like  
17 there's plastic over -- over -- over -- I  
18 know there's plastic over the cap,  
19 because I opened it, and -- and so that  
20 would be, I guess, the feature. I mean,  
21 it kind of covers up -- I think it's -- I  
22 think there's a -- it's -- first time I  
23 opened it up, kind of interesting that  
24 it's cork and not a normal screw cap.  
25 Maybe I was used to drinking cheaper



1      liquor usually.

2                    Q            Understood.

3                    And is it your opinion that the  
4      plastic that covers the bottle cap is  
5      also part of the Trade Dress?

6                    MR. SERVODIDIO:    Objection,  
7                    vague and ambiguous.

8                    A            I believe that -- that it is,  
9      again, part of the Trade Dress, as a  
10     whole, but it is not separately  
11     protectable.

12                  Q            Understood.

13                  And quickly going through these  
14     elements in paragraph 22 of your report,  
15     for the Bulleit Trade Dress, the first  
16     bullet point identifies a clear,  
17     canteen-shaped glass bottle, with rounded  
18     shoulders; do you see that?

19                  A            Yes.

20                  Q            Is it your opinion that that  
21     element is separately protected by the  
22     '812 registration?

23                  MR. SERVODIDIO:    Objection,  
24                  vague and ambiguous, outside the  
25                  scope.

1           A           I believe it is part of the --  
2   of the -- yes, I believe it is part of  
3   the Trade Dress of the `812.

4           Q           And is it protected by the `812  
5   registration as a standalone feature?

6                   MR. SERVODIDIO: Asked and  
7   answered, vague and ambiguous,  
8   outside the scope, and calls for a  
9   legal conclusion.

10          A           I believe it -- I mean, it's --  
11   it -- the canteen shape is the -- is  
12   the -- the shape of the bottle. That is  
13   part of the Trade Dress. Whether, you  
14   know, it is -- I don't know if you could  
15   say it would be separately protected,  
16   because I don't know how you would  
17   separately protect that, an element of --  
18   of -- of Trade Dress, because at the end  
19   of the day you have to look at a Trade  
20   Dress as the -- as the entire image. I  
21   mean, it's -- like in two pesos you  
22   couldn't take out the sombrero and say  
23   that is where a sombrero might not have  
24   been separately protected. It was part  
25   of the overall Trade Dress.

1                   It's just like here, you know,  
2    it is part of the overall Trade Dress or,  
3    in the old days, we said getup of the --  
4    of the bottle.

5           Q       Understood.

6                   And does the '812 registration  
7    cover all versions of a clear,  
8    canteen-shaped glass bottle, with rounded  
9    shoulders?

10           MR. SERVODIDIO: Objection,  
11    calls for a legal conclusion,  
12    outside the scope, vague and  
13    ambiguous.

14          A       No.

15          Q       Why not?

16          A       Because the --

17           MR. SERVODIDIO: Same --  
18    same objections, outside the  
19    scope, vague and ambiguous, calls  
20    for a legal conclusion, outside  
21    the scope of the report.

22          A       Because the Trade Dress is more  
23    than just a canteen shape. I mean,  
24    they're -- we put out a number of  
25    elements that are part of the Trade

1 Dress, so you can't -- so, you know, it  
2 -- I cannot say unequivocally that a  
3 canteen -- a canteen-shaped glass bottle,  
4 that -- that -- that -- Bulleits -- I  
5 cannot say that the Bulleit Trade Dress  
6 would cover all clear glass,  
7 canteen-shaped bottles, with rounded  
8 shoulders.

9 Q Understood.

10 Does the `812 registration  
11 cover -- withdrawn.

12 Is there any size limitation  
13 for the clear, canteen-shaped glass  
14 bottle, with rounded shoulders,  
15 element of the `812 registration?

16 MR. SERVODIDIO: Object to  
17 form, vague and ambiguous as to  
18 size limitation, calls for a legal  
19 conclusion.

20 A Again, the answer's yes and no.  
21 And it's -- and I -- I say -- and the  
22 reason is, you know, I -- size is a very  
23 nebulous word, and I think that if you  
24 greatly alter the dimensions of the -- of  
25 the can- -- of the canteen shape then you

1 will not -- then it would not depict the  
2 Bulleit Trade Dress.

3 Q Understood.

4 And just so I understand  
5 you, when you say, "the dimensions,"  
6 which dimensions are you referring to?

7 A I'm referring to almost all the  
8 dimensions, I mean, there's -- there's a  
9 certain, you know, I don't want to say  
10 width, you know, but the -- I mean, the  
11 canteen-shaped bottle is in certain  
12 proportions. If you change some of those  
13 proportions you would change, in my mind,  
14 the -- you might still have a canteen  
15 shape, but you would not have a canteen  
16 shape depicted in -- in -- in the '812  
17 registration.

18 Q Understood.

19 And is it your opinion that the  
20 '812 registration covers the Bulleit  
21 bottle packaging in a 375 milliliter  
22 size?

23 MR. SERVODIDIO: Object to  
24 form, vague and ambiguous, outside  
25 the scope, calls for a legal

1 conclusion.

2 A I cannot recall seeing a 375

3 milliliter bottle, so I have no opinion.

4 Q Okay. You would agree with me

5 that `812 registration isn't limited to a

6 750 milliliter size canteen-shaped

7 bottle?

8 MR. SERVODIDIO: Objection,

9 compound, vague and ambiguous,

10 calls for a legal conclusion as to

11 limited.

12 A No, so long as that other size

13 bottle had the same proportions as the

14 bottle depicted in the `812 registration.

15 Q Understood.

16 Also on paragraph 22, your

17 second bullet point for the Bulleit

18 Trade Dress, is: Embossed brand name

19 above the label. Is it your opinion

20 that that element covers any embossed

21 brand name above the label?

22 MR. SERVODIDIO: Objection,

23 outside the scope.

24 A Again, it cannot cover -- no.

25 Well, maybe I should not say again. No

1 is the answer.

2 Q What embossed brand name does  
3 it cover?

4 MR. SERVODIDIO: Object to  
5 form, vague and ambiguous.

6 A It would -- it would cover an  
7 embossed brand name of a spirits bottle  
8 that had a clear canteen shape, an arched  
9 line above the text, and possibly some of  
10 the other elements that I depicted.

11 Again, you can't -- you don't  
12 necessarily have to have all the  
13 elements, but you have to have more than  
14 one, I believe.

15 Q And is it your position that  
16 the '812 registration just covers the  
17 idea of embossed brand names above a  
18 label?

19 MR. SERVODIDIO: Vague and  
20 ambiguous as to idea, outside the  
21 scope.

22 A That's my -- that's my request  
23 is what do you mean by idea?

24 Q Well, I believe you said  
25 it's -- the '812 registration the

1 embossed brand name element isn't limited  
2 to one specific brand name?

3 MR. SERVODIDIO: Objection,  
4 vague and ambiguous.

5 A Did I say that?

6 MR. SERVODIDIO: Misstates  
7 his --

8 MS. KOROTKIN: I may have  
9 misunderstood what you said.

10 BY MS. KOROTKIN:

11 Q I think I -- my question,  
12 before, was -- I can just read it back.

13 I said: What embossed brand  
14 name does it cover. And you said: It  
15 would cover an embossed brand name of  
16 a spirits bottle that had a clear  
17 canteen shape, and arched line above  
18 the text, and possibly some of the  
19 other elements that I depicted.

20 Again, you can't -- you don't  
21 necessarily have to have all the  
22 elements, but you have to have more  
23 than one, I believe.

24 A So what's your --

25 MR. SERVODIDIO: So what's



1 the question?

2 BY MS. KOROTKIN:

3 Q Does the `812 registration

4 cover the idea of an embossed brand name

5 above the label?

6 MR. SERVODIDIO: I'm going

7 to say, still, object, vague and

8 ambiguous as to idea, outside the

9 scope of the report, calls for a

10 legal analysis.

11 A Yeah, I don't know what you

12 mean by cover the idea.

13 Q Do you believe that `812

14 registration gives Diageo exclusive

15 rights to the use of an embossed brand

16 name above a label on a bottle?

17 MR. SERVODIDIO: Outside the

18 scope, calls for -- obviously

19 calls for a legal conclusion,

20 beyond the scope.

21 A No, it -- it -- Diageo does not

22 have exclusive rights for any brand name

23 above a label. But unless that brand

24 name above the label is part of a clear,

25 canteen-shaped glass bottle, with rounded

1 shoulders, and -- and -- and there is  
2 some sort of arching text above the top  
3 line of the embossed brand name.

4 Q Understood.

5 So for each of the elements  
6 you've identified in paragraph 22 of your  
7 opening report, as constituting the  
8 Bulleit Trade Dress, is it fair to say  
9 you believe that Diageo does not own  
10 exclusive rights to any one of those  
11 elements separate and apart from the  
12 others?

13 MR. SERVODIDIO: Object,  
14 vague and ambiguous, calls for a  
15 legal conclusion, outside the  
16 scope of the report, misstates his  
17 testimony.

18 THE WITNESS: After all  
19 that, I'm going to need you to  
20 repeat the question because I  
21 don't quite understand the last  
22 part of it.

23 BY MS. KOROTKIN:

24 Q Okay. Well, we can also just  
25 go through them one by one. It might

1 make it simpler.

2 I believe you may have

3 answered this already, but just to

4 confirm, is it your opinion that

5 Diageo does not own exclusive rights

6 to the standalone element of a clear,

7 canteen-shaped glass bottle, with

8 rounded shoulders?

9 MR. SERVODIDIO: Objection,

10 asked and answered, vague and

11 ambiguous, outside the scope of

12 the report.

13 A I agree, Diageo does not have

14 exclusive rights to a clear,

15 canteen-shaped glass bottle, with rounded

16 shoulders.

17 Q And do you agree that Diageo

18 does not own exclusive rights to the

19 standalone element of an embossed brand

20 name above the label?

21 MR. SERVODIDIO: Objection,

22 calls for a legal conclusion,

23 outside the scope of the report.

24 A I agree with that statement.

25 Q And do you agree that Diageo

1 does not own exclusive rights to the  
2 standalone element of arched text in the  
3 top line of the embossed brand name?

4 MR. SERVODIDIO: Objection,  
5 calls for a legal conclusion,  
6 outside the scope of the report.

7 A I agree with that statement.

8 Q And do you agree that Diageo  
9 does not own exclusive rights to the  
10 standalone element of convex text divider  
11 between components of the embossed brand  
12 name, e.g., Bulleit Bourbon separated  
13 from Frontier Whiskey?

14 MR. SERVODIDIO: Objection,  
15 calls for a legal conclusion,  
16 outside the scope of the report.

17 A I agree with that, too.

18 Q And do you agree with the  
19 statement that Diageo does not own  
20 exclusive rights to the standalone  
21 element of arrow-shaped text divider on  
22 the label?

23 MR. SERVODIDIO: Objection,  
24 calls for a legal conclusion,  
25 outside the scope.

1           A           I agree with that, too.

2           Q           And do you agree with the  
3           statement that Diageo does not own  
4           exclusive rights in the standalone  
5           element of border of parallel lines on  
6           the label?

7                   MR. SERVODIDIO:   Same  
8           objections.

9           A           Same agreement.

10          Q           And do you agree that Diageo  
11          does not own exclusive rights to the  
12          standalone element of cork bottle cap  
13          with a black top?

14                 MR. SERVODIDIO:   Same  
15          objections.

16          A           I agree.

17                 MS. KOROTKIN:   Okay.   We can  
18          take a quick break.   I think we've  
19          been going for an hour and a half.

20                 THE VIDEOGRAPHER:   This is  
21          the end of disk number one in the  
22          deposition of Philip Hampton, II.  
23          The time is now 10:58 a.m.   We are  
24          off the record.

25                 (Recess.)

1 THE VIDEOGRAPHER: This is  
2 the beginning of disk number two  
3 in the deposition of Philip  
4 Hampton, II. The time is now  
5 11:13 a.m. We are back on the  
6 record.

7 BY MS. KOROTKIN:

8 Q Thank you. We're back on the  
9 record, Mr. Hampton.

10 We were talking a bit earlier  
11 about the definition of the Bulleit Trade  
12 Dress. And I think I just have one or  
13 two more questions for you there.

14 I notice in paragraph 21 of  
15 your opening report you've identified a  
16 product, Bulleit Bourbon, that includes  
17 an orange label; is that correct?

18 A Yes.

19 Q And is it your opinion that the  
20 color orange of the label is an element  
21 included in the Bulleit Trade Dress?

22 MR. SERVODIDIO: Object to  
23 form, outside the scope, calls for  
24 a legal conclusion.

25 THE WITNESS: Repeat your

1 BY MS. KOROTKIN:

2 Q Is there a USC CFR MPEP or case  
3 law authority that you can point to, to  
4 answer that question?

5 MR. SERVODIDIO: Object to  
6 form, vague and ambiguous.

7 A There is probably no specific  
8 case law, because, you know, once the  
9 presumption is there if the application  
10 does not register, because it is late --  
11 because it -- the design is later found  
12 to be functional, clearly the presumption  
13 is -- is loss.

14 But -- and I don't think  
15 there's any case law that says that. I  
16 mean, there wouldn't be any need for case  
17 law to say it.

18 MR. SERVODIDIO: Can I just  
19 interrupt? Can you let us know  
20 how long we're on the record.

21 THE VIDEOGRAPHER: Five  
22 hours --

23 MR. SERVODIDIO: Sorry, go  
24 ahead.

25 THE VIDEOGRAPHER: About

1 five hours and 50 minutes.

2 MR. SERVODIDIO: Thank you.

3 BY MS. KOROTKIN:

4 Q Do you believe that the  
5 presumption you've provided an opinion  
6 about would apply if an applicant  
7 withdraws its application from allowance  
8 and submits an IDS with references  
9 disclosing functionality of some or all  
10 of the features claimed in the drawings?

11 MR. SERVODIDIO: Object to  
12 form, outside the scope,  
13 incomplete hypothetical.

14 A Possibly.

15 Q And do you believe that the  
16 presumption should be withdrawn if the  
17 applicant merely abandoned its design  
18 patent applications because it concluded  
19 that they improperly claimed functional  
20 subject matter?

21 MR. SERVODIDIO: Object to  
22 form, incomplete hypothetical.

23 A Maybe.

24 MS. KOROTKIN: Subject to  
25 the right to ask follow-up



1 questions I have no further

2 questions for Mr. Hampton.

3 MR. SERVODIDIO: Okay.

4 We're going to have some

5 follow-up, but I'd like to take a

6 break.

7 MS. KOROTKIN: Okay.

8 THE VIDEOGRAPHER: The time

9 is now 4:57 p.m. We're off the

10 record.

11 (Recess.)

12 THE VIDEOGRAPHER: The time

13 is now 5:10 p.m. We are back on

14 the record.

15 MR. SERVODIDIO: Hi,

16 Mr. Hampton. I just have a few

17 follow-up questions for you.

18 EXAMINATION

19 BY MR. SERVODIDIO:

20 Q Can I ask you to look at your

21 opening report, which has been marked as

22 plaintiff's Exhibit 280, and look at

23 paragraph 22.

24 MS. KOROTKIN: Defendants'

25 280.

1 BY MR. SERVODIDIO:

2 Q Defendants' 280, can you turn  
3 to paragraph 22?

4 A I got it.

5 Q Okay. Do you recall this  
6 morning counsel for the defendants,  
7 Ms. Korotkin, asked you some questions  
8 about whether Diageo has exclusive rights  
9 in the elements of the Bulleit Trade  
10 Dress that you list here in paragraph 22  
11 to your report?

12 A Yes, I do.

13 Q Okay. And do you remember she  
14 asked you whether Diageo has exclusive  
15 rights in the clear, canteen-shaped  
16 bottle; do you remember that question?

17 A Yes, I do.

18 Q And do you remember you said,  
19 yes, that Diageo does not have exclusive  
20 rights in a clear, canteen-shaped bottle?

21 MS. KOROTKIN: Object to  
22 form, misstates the testimony.

23 BY MR. SERVODIDIO:

24 Q You can answer.

25 A Yes, I testified to that.

1 Q Okay. And she also asked you  
2 whether Diageo had exclusive rights in  
3 the other elements of the Trade Dress  
4 that are identified in paragraph 22 of  
5 your report; do you remember those  
6 questions?

7 A Yes, I do.

8 Q And do you remember testifying  
9 positively in response to her questions  
10 that Diageo did not have exclusive rights  
11 in those other Trade Dress elements  
12 listed in paragraph 22?

13 MS. KOROTKIN: Object to  
14 form, vague, confusing, compound.

15 BY MR. SERVODIDIO:

16 Q You can answer.

17 A Yes.

18 Q When counsel for Deutsch asked  
19 you those questions this morning, about  
20 the elements set forth in the Trade  
21 Dress, in paragraph 22 of your report,  
22 was she referring to any particular goods  
23 or services?

24 MS. KOROTKIN: Same  
25 objections.

1           A           Her question was not limited to  
2           any particular goods or services.

3           Q           Okay. Would your answers to  
4           the questions that counsel for Deutsch  
5           asked you be different if you were asked  
6           about Diageo's exclusive rights with  
7           respect to distilled spirits?

8                   MS. KOROTKIN: Object to  
9           form, vague, confusing, compound,  
10          misstates the testimony.

11 BY MR. SERVODIDIO:

12          Q           You can answer.

13          A           Yes, my testimony would have  
14          been different.

15          Q           And why is that?

16          A           Because no -- no -- no  
17          trademark owner gets exclusive rights to  
18          its trademark for all goods and services.  
19          So it's, like, black letter law that, you  
20          know, you don't have rights, just because  
21          you have a registration, you don't have  
22          rights in everything.

23          Q           Do you believe that Diageo had  
24          a valid basis, in connection with the  
25          prosecution of the '812 registration, to

1 claim exclusive rights in a clear,  
2 canteen-shaped bottle?

3 A Restate the question, because  
4 you said the `8-112 and I don't think  
5 it's `8-112.

6 Q I'm sorry? It's not the  
7 `8-112? I think it is.

8 A It's `812 or `812.

9 Q Oh, yeah, you're right.

10 MS. KOROTKIN: It's `812 is  
11 a band.

12 MR. SERVODIDIO: `8-112 is  
13 wrong. Let me try it again, then.

14 BY MR. SERVODIDIO:

15 Q Do you believe that Diageo  
16 had -- had a valid basis to claim  
17 exclusive rights in a clear,  
18 canteen-shaped bottle, glass bottles,  
19 with rounded shoulders, for use in  
20 connection with distilled spirits,  
21 separate and apart from the other  
22 elements of the -- of its Trade Dress  
23 claimed in the `812 registration?

24 MS. KOROTKIN: Object to

25 form, outside the scope of the

1 testimony and the report, lack of  
2 foundation, compound.

3 A Yes, I believe that Diageo had  
4 and has a basis for claiming exclusive  
5 rights in the shape of the bottle,  
6 separate and apart from the overall Trade  
7 Dress.

8 Q And what's the basis for that  
9 testimony, Mr. Hampton?

10 A From the depositions that I  
11 read it -- it appears that the shape of  
12 the bottle was distinctive and that the  
13 shape of the bottle was -- that the  
14 bottle was particularly designed for --  
15 for -- for whiskeys.

16 And the fact that the Patent  
17 and Trademark Office agreed with Diageo,  
18 once it made the argument that the bottle  
19 was distinctive and evoked the memory of  
20 a -- of a Frontier-style canteen or  
21 medicine bottle.

22 Q So is it possible that Diageo  
23 could not have exclusive rights in a  
24 clear, canteen-shaped glass bottle, with  
25 rounded shoulders, for goods other than

1 distilled spirits, but have exclusive  
2 rights with respect to that element for  
3 distilled spirits?

4 MS. KOROTKIN: Object to  
5 form.

6 A Yes, I think that that --  
7 that -- that -- that's the -- that is  
8 what is the case here, that Diageo has  
9 exclusive rights in their can- -- in a  
10 clear, canteen-shaped bottle for  
11 distilled spirits.

12 Q Right. Now, in connection with  
13 your review of the prosecution history of  
14 the '812 registration is it your  
15 understanding that Diageo is claiming  
16 exclusive rights in the elements of its  
17 Trade Dress separately, other than the  
18 clear, canteen-shaped bottle, with  
19 rounded shoulders?

20 MS. KOROTKIN: Object to  
21 form.

22 A No. I -- I do not believe that  
23 Diageo is claiming exclusive rights in  
24 any parts of its Trade Dress, separate  
25 and apart from the Trade Dress as a

1 whole.

2 Q Right. Do you have an opinion,  
3 one way or the other, whether Diageo has  
4 exclusive rights in embossed brand names  
5 above a label for use in connection with  
6 goods other than distilled spirits?

7 MS. KOROTKIN: Object to  
8 form.

9 THE WITNESS: Can I have  
10 that question repeated.

11 BY MR. SERVODIDIO:

12 Q Do you have an opinion, one way  
13 or the other, whether Diageo is entitled  
14 to claim exclusive rights in an embossed  
15 brand name, above the label, for use in  
16 connection with goods other than  
17 distilled spirits?

18 MS. KOROTKIN: Object to  
19 form, misstates the Trade Dress,  
20 vague, compound.

21 A No.

22 Q Okay. Do you have an opinion  
23 whether Diageo has the exclusive rights  
24 to use the elements of its Trade Dress,  
25 other than a clear, canteen-shaped



1 bottle, separate and apart from the Trade

2 Dress for use in connection with

3 distilled spirits?

4 MS. KOROTKIN: Object to

5 form.

6 THE WITNESS: What was the

7 question again?

8 BY MR. SERVODIDIO:

9 Q Do you have an opinion -- we

10 talked about the first element of a

11 clear, canteen-shaped glass bottle, with

12 rounded shoulders; do you remember that?

13 A Yes, I do.

14 Q Okay. So now I'm asking you

15 about the other elements of the Trade

16 Dress that are listed in paragraph 22 of

17 your report.

18 Do you have an opinion whether

19 or not Diageo may claim exclusive rights

20 to those other elements, separate -- as

21 separately -- as separate elements, apart

22 from the Trade Dress, for use in

23 connection with distilled spirits?

24 MS. KOROTKIN: Object to

25 form, compound.

1           A       No, I really don't -- I really  
2       haven't looked at that. I really don't  
3       have an opinion on that.

4           Q       Right. And do you understand  
5       Diageo was claiming exclusive rights to  
6       the elements separate -- the elements of  
7       its Trade Dress listed in paragraph 22,  
8       separate and apart from the entirety of  
9       the Trade Dress?

10           MS. KOROTKIN: Object to  
11       form, vague as to time.

12           A       No. I -- I -- I don't believe  
13       that Diageo was claiming rights in the  
14       separate elements of its Trade Dress,  
15       separate and apart from the Trade Dress,  
16       as a whole, except for the clear,  
17       canteen-shaped glass bottle, with rounded  
18       shoulders.

19           MR. SERVODIDIO: Right. I  
20       have no further questions.

21           MS. KOROTKIN: And I'll just  
22       have one or two follow-up  
23       questions.

24       ///

25       ///

## EXAMINATION

BY MS. KOROTKIN:

Q If I understand your testimony accurately, Mr. Hampton, is it fair to say you are now providing the opinion that Diageo has exclusive Trade Dress rights in standalone elements of a clear, canteen-shaped glass bottle, with rounded shoulders?

MR. SERVODIDIO: Objection, mischaracterizes his testimony.

A My testimony is that I believe that Diageo has the right to claim exclusive rights in a clear, canteen-shaped bottle, with rounded shoulders, separate and apart for one's Trade Dress, as a whole, for distilled spirits.

Q And what is the basis of that opinion?

A The basis of that opinion is the fact that the -- the trade -- well, the basis of that opinion are that the Trade Dress, as registered, does not show the bottle and dotted lines. So it means

## 1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Cassandra E. Ellis, Registered Professional  
3 Reporter, the officer before whom the foregoing  
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6 the proceedings; that said proceedings were taken by  
7 me stenographically and thereafter reduced to  
8 typewriting under my supervision; and that I am  
9 neither counsel for, related to, nor employed by any  
10 of the parties to this case and have no interest,  
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this 19th day of June 2019.

14 My commission expires:

15 December 14, 2022

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17   
18  
19

20 CASSANDRA E. ELLIS, CSR-HI, CSR-VA, CCR-WA, CLR, RPR  
21 REALTIME SYSTEMS ADMINISTRATOR  
22 NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA  
23  
24  
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